No. 558.

Sup. Br. of Burton for P. E. (me

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No. 558.

Filed Feb. 21, 1898.

SUPREME COURT OF THE UNITED STATES.

FEBRUARY TERM, 1898.

J. W. WILSON, PLAINTIFF IN ERROR,

versus

THE STATE OF NORTH CAROLINA, ON RELATION OF L. C. CALDWELL.

Supplemental Brief for the Plaintiff in Error, on the Motion to Dismiss or Affirm.

In connection with pp. 17 and 18 of my brief, I desire to add: The practice in England before the Declaration of Independence is well shown by 5 Com. Dig., Title Officer (K 12), where divers cases are collected.

In the case in 9 Co., 98a (Sir George Reynel's case), it was also resolved, that forasmuch as the office was found by force of a commission under the great seal, and returned in this Court (K. B), that (although the office be to be executed in another Court) yet the award of the seisin shall be in this Court, where the office is returned, and in this Court the party shall have his traverse, or *monstrans de droit*, as his case is, to avoid the office.

The record of Mark Steward's case is set out in full (9 Coke, 99b—104a), by which it appears that after office found in Chancery, an issue was awarded and a special verdict found by the jury; and Steward was restored to his office.

When there was office found or an inquisition, the party aggrieved had his remedy either by *petition de droit*, or petition of right, or *monstrans de droit* (manifestation or plea of right), both of which could be preferred in the Chancery or Exchequer; and by Statute of 36 Edw. 3d, and 2 and 3 Edw. 6, inquisitions of office could be traversed.

3 Black. Com., *256, *260.

In *Rex* v. *Mayor of Doncaster*, a capital burgess was restored to his office.

2 Ld. Raym., 156, 4.

So in *Rex* v. *Mayor of Doncaster* an alderman was restored.

Sayers, 37.

See also Queen *v.* Guy, 6 Mod., 89.

In Baggs's case it was resolved that to the King's Bench belongs authority, not only to correct errors in judicial proceedings, but other errors and misdemeanors extra-judicial, tending to the breach of peace, or oppression of the subjects, or to the raising of faction, controversy, debate, or to any manner of government; so that no wrong or injury, either public or private, can be done, but that it shall be (here) reformed or punished by due course of law.

11 Co., 98a.

In *The King* v. *The Warden of the Fleet*, 3 Mod. Rep., 335, an inquisition to seize the office of Warden of the Fleet into the King's hands was quashed in the Court of Chancery, assisted by three judges, because it did not find (1) the estate of the party offending; (2) a cause of forfeiture.

See also Manlove's case, 3 Levinz, 288; 3 Salk., 469.

In *Rex* v. *Stirling*, Sayer's Rep., 174, a peremptory mandamus was issued to the vicar to restore a parish clerk, because the office being *prima facie* for life, Hall had a freehold therein unless the vicar had a power of appointing thereto during pleasure, which did not appear. It was said the return must be in such precise terms, that the truth may be tried in an action for a false return; or, if the cause returned be admitted, the Court may be able to judge of the goodness thereof.

"It not appearing that the party has any redress by applying to another Court, this Court will relieve him, if he has been proceeded against and defrauded, without being heard, which is contrary to natural justice."

Rex *v.* Cambridge, 2 Ld. Ray 1334, 1348.

"It is the glory and happiness of our excellent constitution that to prevent any injustice no man is to be concluded by the first judgment; but that if he apprehends himself to be aggrieved, he has another Court to which he can resort for relief; for this purpose the law furnishes him with appeals, with writs of error and false judgment, and lest in this particular case the party should be remediless, it was become absolutely necessary for this Court to require the University to lay the state of their proceedings before us; that if they have erred the party may have right done him, or if they have acted according to the rules of law, that their acts may be confirmed."

Parker, C. J., in Rex *v.* Cambridge, 1 Strange, 565.

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Raleigh, N. C.